

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of:	)	
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Petition for Preemption of Article 52 of	)	
the San Francisco Police Code Filed by the	)	MB Docket No. 17-91
Multifamily Broadband Council	)	
	)	
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COMMENTS OF PROMETHEUS REAL ESTATE GROUP, INC.:

Prometheus Real Estate Group, Inc. hereby submits these comments in response to the April 4, 2017 Public Notice seeking comment on the February 24, 2017 Petition for Preemption (“Petition”) filed by the Multifamily Broadband Council (“MBC”). Prometheus Real Estate Group, Inc. (“Prometheus”) asks that the Commission grant the Petition because Article 52 of the San Francisco Police Code effectively discourages facilities-based competition and infrastructure investment in multiple dwelling unit (“MDU”)<sup>1</sup> buildings, harms broadband deployment, raises communications service prices for residents, and conflicts with federal law.

1. Prometheus was founded in 1965 and is a privately held company. It is headquartered in San Mateo, California. Prometheus builds and manages Class “A” MDUs in California, Oregon and Washington. While Prometheus currently does not own or manage any properties in the City of San Francisco<sup>2</sup>, it is concerned that the ordinance, if upheld, may become a model for other jurisdictions in Silicon Valley and

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<sup>1</sup> An MDU is a centrally managed real estate development, such as an apartment building, condominium building or cooperative, gated community, mobile home park, or garden apartment. See 47 C.F.R. § 76.2000(b).

<sup>2</sup> In the past, Prometheus has managed properties in the City of San Francisco.

beyond. Additionally, Prometheus is an active developer in the real estate market, and may come to own property in the future in San Francisco that would be directly impacted by Article 52 if this ordinance is not pre-empted. Prometheus strives to maximize what it refers to as the “ultimate leasing experience” for its residents. Prometheus’s entrepreneurial spirit and innovative thinking endeavors to create and provide state of the art systems and amenities to its residents.

2. The FCC should determine that Article 52 is preempted because it interferes with the federal regulatory framework for competitive access to inside wiring, where the FCC currently “occupies the field,” thus creating a conflict between the ordinance and federal law and policy. The FCC has acted to remove regulatory barriers to broadband deployment at the federal, state and local levels. This local ordinance, despite its stated goal, is a barrier to investment and broadband expansion because it actually disincentivizes service to MDUs, effectively reducing competition.

3. Prometheus works with its providers to deliver competitive communications services and choice to residents. Article 52 will both interfere with current agreements and impact future services to residents in the following ways:

- Currently, Communications Service Providers (“CSPs”) invest in our new construction’s wiring infrastructure in exchange for exclusive access during a negotiated contract period. This in turn enables us, as a developer, to install extra wiring to provide higher quality options to our residents, while defraying construction costs in an increasingly expensive labor market. Article 52, conversely, would permit other CSPs, who made no such investment in our communities, unfettered access to that wiring, essentially allowing them to “piggyback” on the labor and expense of others. This will effectively eliminate any incentive for CSPs to proactively

invest in our properties, thereby reducing the amount of wiring infrastructure we could afford to install and reducing the quality and options available to our residents.

- Prometheus consistently installs its own wiring, separate from the wiring used by the CSPs to support systems like door locks, security systems, smart apartments, etc. If Article 52 is upheld, any communications provider could appropriate this wire for its own services, potentially rendering our systems inoperable, thus negating the advanced technology that we are trying to provide to our residents while jeopardizing their safety.
- Prometheus is an award winning developer/property manager. We pride ourselves not just on the quality of our properties, but in the experience that our residents receive living at our communities. Rather than benefit the resident as may have been intended, Article 52 instead creates an onerous burden for the resident. For example, when a service problem occurs, the onus is now upon both the resident and the property manager to decipher, amid a complex web of competing CSP wiring, why the problem exists and what caused it. Today, our agreements place the onus on the CSPs, armed with superior technical expertise of their own networks and resources, to maintain and upgrade the facilities at their own expense. If a CSP were essentially able to tap into the wiring used by another provider, we would end up in a finger-pointing situation replete with the unnecessary filing of lawsuits, placing the resident in the middle. Only the lawyers benefit from such an arrangement. Our Site team would ultimately bear the burden of managing these issues, which would be incredibly challenging to handle, not to mention determine the root cause of the problem. Essentially, the enforcement of Article 52 would result in poorer customer service for our residents.
- Article 52 impacts our existing buildings in that it does not incentivize providers to maintain and upgrade wiring within the buildings. The burden to upgrade the infrastructure will ultimately fall to the property owner, thereby reducing the amount of infrastructure that is upgraded for services such as internet, television and telecommunications due to both inferior institutional knowledge in those areas and the property owner's ability to afford it.
- In an effort to protect the environment and promote resource efficiency, Prometheus constructs LEED and Green Point Rated buildings. Due to

the efficiency of our building envelopes, we have been forced to find solutions to boost cellular coverage to our properties for our residents. These remedies have included installing a DAS system and/or systems that use roof top antennas. Many CSPs utilize microwave technology, which can disrupt and interrupt existing reception devices. Moreover, the DAS system would also be subject to use by any CSP, which would negatively impact our residents' ability to obtain adequate cell reception, which at best would be a source of great frustration for our residents, and at worst pose a threat to their personal safety, as many of our residents have opted to jettison their land lines in favor of cellular service.

- Article 52 encourages CSPs to “tack on” services after construction. This means the MPOE (“Main Point of Entry”) rooms will likely not be correctly sized, causing myriad of security concerns. The media cabinets installed in the apartment homes will not be large enough to accommodate several additional providers. As a result, equipment will invariably be left outside of the cabinets, creating a fire hazard. Because Article 52 would effectively eliminate maintenance and installation agreements with CSPs, such negligent actions could not be properly deterred and prevented. Consequently, a number of safety issues will arise for our residents, potentially unique to each unit, rendering monitoring and resolution a logistical nightmare.

For the foregoing reasons, Prometheus Real Estate Group, Inc. respectfully requests that the Federal Communications Commission grant MBC's Petition for Preemption.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Mary Nitschke", is written over a horizontal line.

Mary Nitschke

Director of Ancillary Services

Date: May 18, 2017